

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ABS GLOBAL, INC.,

Plaintiff/Counterclaim Defendant,

v.

INGURAN, LLC,

Defendant/Counterclaimant/Third-Party Plaintiff,

and

XY, LLC,

Intervening Defendant/Counterclaimant/Third-Party Plaintiff,

and

CYTONOME/ST., LLC,

Intervening Defendant,

v.

GENUS PLC,

Third-Party Defendant.

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This case is set for a jury trial commencing August 1, 2016. Based on the parties' additional briefing and oral argument at the final pretrial conference, the court issues the following order with respect to the remaining motions *in limine* and the schedule going forward.

**A. ABS's Motion *in Limine* #12**

As confirmed by the parties' counsel at the final pretrial conference, this motion will be DENIED as moot.

**B. ABS's Motion *in Limine* #14**

As explained at the final pretrial conference and addressed in the order below, the court will RESERVE on this motion pending further briefing from the parties.

**C. ABS's Motion *in Limine* #18**

With respect to this motion, the court will instruct the jury as follows: XY and Trans Ova had a licensing agreement to use XY semen sorting technology from April of 2004 to April of 2009. A lawsuit arose over that agreement resulting in a determination that Trans Ova and XY both materially breached the agreement, and both parties were entitled to damages for those breaches.

**D. ST's Motion *in Limine* #1**

As explained in further detail at the final pretrial conference, ABS can use sworn testimony from ST and XY's witnesses from other litigation for impeachment purposes. This motion is further GRANTED IN PART with respect to the *Semex Alliance* and *Colorado State University Research Foundation* litigation and DENIED IN PART with respect to the *Ottenberg* and *Monsanto Co.* litigation. If ABS opens the door by

mentioning the latter two cases, then ST may have an opportunity to further explain their context.

**E. ST's Motion *in Limine* #3**

As explained in further detail at the final pretrial conference, ABS may make no argument that any patents it owns negate infringement of the patents asserted by ST in this case unless approved in advance outside the presence of the jury. All of paragraph four of ABS's proffer regarding this motion is precluded, although ABS can generally mention that it has filed for patent applications related to its work on semen sorting. Finally, although ABS will be permitted to introduce the first sentence of the third paragraph of that proffer, the court will RESERVE on whether ABS can mention U.S. Patent No. 8,961,904, pending further briefing from the parties as set forth below.

**F. ST's Motion *in Limine* #5**

With respect to this motion, the court will instruct the jury as follows: In addition to the two patents in dispute here, XY has asserted infringement of two of its patents covering aspects of semen sorting technology that are pending before the Patent Trial and Appeal Board.

**G. ST's Motion in *Limine* #8**

For the reasons discussed at the final pretrial conference, this motion is GRANTED.

**H. ST's Motion in *Limine* #11**

Based on the representations made by the parties' counsel at the final pretrial conference, the court will continue to RESERVE on this motion as it relates to the damages phase of trial.

**B. ST's Motion in *Limine* #14**

If ABS expects to offer any newspaper, magazine or internet articles referencing this litigation or any alleged monopolistic or anticompetitive conduct by ST, then it must make an advance proffer outside the presence of the jury.

**ORDER**

IT IS ORDERED that:

1. With respect to ST and XY's motion in limine number 9, the parties shall meet and confer regarding issues on which ABS claimed attorney-client privilege, with any proffer of specific issues from ST due by 9:00 A.M. on Wednesday, July 27, 2016, and any response from ABS due by 9:00 A.M. on Thursday, July 28, 2016;
2. By 5:00 P.M. on Wednesday, July 27, 2016, ST shall explain in a written statement in what ways it will suffer prejudice if ABS is permitted to assert a defense of non-infringement on claims 40-46 of the '092 patent, with any response from ABS due by 5:00 P.M. on Thursday, July 28, 2016;

3. By 5:00 P.M. Wednesday, July 27, 2016, ABS may file a written response to ST's proffer regarding the commercial success of the '092 patent, with any reply from ST due by 5:00 P.M. on Thursday, July 28, 2016;
4. By 9:30 A.M. on Thursday, July 28, 2016, the parties shall meet and confer regarding the paring down of the patent infringement claims asserted in this case and file a written statement as to which dependent and independent claims remain;
5. The parties may file by 5:00 P.M. on Friday, August 5, 2016, briefing regarding the legal standard in the Seventh Circuit concerning the requirement of a plaintiff to offer evidence of the cross-price and -demand elasticity in defining a relevant antitrust market;
6. The parties may file by 5:00 P.M. on Friday, August 5, 2016, a written statement regarding the need for the jury to decide the patent and contract claims if it finds liability on ABS's monopolization claim;
7. The court will hold a telephonic conference at 10:00 A.M. on Thursday, July 28, 2016, to discuss the length of trial, closing liability instructions, individual exhibit objections and expert witness narratives; and
8. ABS's counsel is to initiate the call for the Thursday telephonic conference.

Entered this 27th day of July, 2016.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge